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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
10/812,718	03/29/2004	Jon C. Taenzer	GNN P745 US2	3745		
84561	7590	01/22/2009	EXAMINER			
Vista IP Law Grouo, LLP 1885 Lundy Ave., Suite 108 San Jose, CA 95131				LEE, PING		
ART UNIT		PAPER NUMBER				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JON C. TAENZER

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Application 10/812,718  
Technology Center 2600

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Mailed: January 14, 2009

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Before PAMELA S. BENNETT, *Review Team Paralegal*.

BENNETT, *Review Team Paralegal*.

**ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER**

This application was electronically received at the Board of Patent Appeals and Interferences on July 10, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

**EXAMINER'S ANSWER, GROUNDS OF REJECTION**

A review of the file finds that the grounds of rejection of the claims as provided in the Examiner's Answer mailed November 15, 2007 under the

heading “Grounds of rejection” is not consistent with the grounds of rejection of claims set forth in the last Office action of record. The grounds of rejection of the claims as provided in the Examiner’s Answer must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions.

Specifically, the Examiner’s Answer sets forth the following grounds of rejection:

1. Claims 17-35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement [page 3];
2. Claims 17, 19-21, 23 and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Welker et al (“Microphone-Array Hearing Aids with Binaural Output – Part II: A Two-Microphone Adaptive System”) (hereafter Welker) [page 5]; and
3. Claims 17, 18, 23, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klootsema et al. (hereafter Klootsema) (US 6,697,494) [page 6].

However, the Final Rejection mailed December 29, 2005 listed the above three grounds of rejection, but also included the following ground of rejection:

Claims 21, 22, 27 and 28, 37, 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klootsema as applied to claims 17 and 23, 36 above, and further in view of Brennan et al. (US 6,240,192) [page 6].

## **CONCLUSION**

Accordingly, it is **ORDERED** that the application be returned to the Examiner:

- 1) to clarify the status of the § 103(a) rejection of claims 21, 22, 27 and 28, 37, and 48 “as being unpatentable over Klootsema as applied to claims 17 and 23, 36 above, and further in view of Brennan et al (US 6,240,192)” [Final Rejection, page 6];<sup>1</sup>
  - a) if the above rejection was inadvertently omitted from the Examiner’s Answer, vacate the Examiner’s Answer mailed November 15, 2007 and generate a new Examiner’s Answer setting forth the correct Grounds of rejection and correcting other sections of the Answer as may be required;
  - b) if the above rejection was withdrawn, prepare a PTOL-90 which notifies appellant of such withdrawal; and
- 2) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

PSB

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<sup>1</sup> It is noted that claims 36-52 were cancelled pursuant to the Amendment filed February 28, 2006.